Andy K's DAIRY & DELI

June 3, 1998

Mr. Geoffrey C.S. March, Chief Public Utility Tax
State of New Jersey
Department of the Treasury
Division of Taxation
50 Barrack Street
Trenton, New Jersey 08646-0269

Re: The Unfair Cigarette Sales Act

Dear Mr. March,

I want to thank you and your colleagues for taking the time to meet with us last Thursday in an attempt to clarify the Division of Taxation's position with respect to several practices that are on going today in the sales and advertising of cigarettes.

The purpose of this letter is to seek confirmation that the following specific transaction would not be deemed a violation of the Act.

Background

Currently Andy K's charges the following prices for premium cigarettes:

One pack - $2.74 plus sales tax for a total of $2.90
Two packs- $5.09 plus sales tax for a total of $5.40
Carton - $25.07 plus sales tax for a total of $26.57

Scenario

A manufacturer comes to our store and offers to buy down by 25 cents per pack a particular brand of their cigarettes if Andy K's is willing to accept that buy down as part of our normal sales price and reduce the amount collected from the consumer by the 25 cents per pack. Andy K's accepts the offer and posts a sign showing our normal price and the fact that the manufacturer is contributing 25 cents per pack towards the sale price. On a periodic basis Andy K's shows the manufacturer how many packs of the particular brand it sold and the manufacturer sends a check, payable to Andy K's which we deposit into our bank and record as sales in our books and records.

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Rational

It is my opinion that I have not violated The Unfair Cigarette Sales Act. N.J.S.A.. 56:7-20 states that it shall be unlawful to " (1) to advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to such retailer or wholesaler, as the case may be, (2) to offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatsoever in connection with the sale of cigarettes...". Indeed, I have sold that pack of cigarettes for my normal price (which is never below the established minimum retail price of cigarettes). It is just that my normal price was paid in two component parts, an amount collected from the consumer and an amount collected by the manufacturer. I did not offer a rebate or in fact any concession in connection with sale of those cigarettes.

N.J.A.C. 18.6-7.11(c) states that "The total sales price displayed on any signs advertising cigarettes at wholesale or retail is never to be lower that the minimum price fixed by the New Jersey Unfair Cigarette Sales Act.." Of particular interest is the regulation's use of the words "total sales price". I have displayed the total sales price, which is my normal price, and is not below the minimum price fixed by the Act. . I have also shown the amount of the purchase that will be paid by the manufacturer and the amount that must be paid by the consumer.

I believe that the above interpretation is both reasonable and appropriate. I believe that this interpretation is consistent with the spirit of the law, and consistent with the industry practices of at least the last decade. Any other interpretation would serve no purpose other than to put New Jersey retailer's at a further competitive disadvantage with our counterparts in surrounding states and therefore drive more retail sales out of our state.

If any additional information is needed for you to review this scenario, please do not hesitate to contact me. Thank you in advance for you consideration. I look forward to receiving your response just as soon as practical. Manufacturer's have planned several of these types of buy downs in the coming weeks and therefore I have an urgent need for the confirmation I seek.

Respectfully,

Andrew Kerstein
President

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